United States Court of Appeals

for the Second Circuit

PETITIONER'S BRIEF AND APPENDIX

76-4009

United States Court of Appeals

FOR THE SECOND CIRCUIT

RALPH CAPUTO, *Claimant*

—and—

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR,

Respondents,

—against—

NORTHEAST MARINE TERMINAL COMPANY, INC., *Employer*

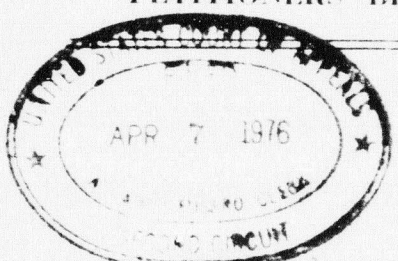
—and—

STATE INSURANCE FUND, *Carrier,*

Petitioners.

ON PETITION TO REVIEW ORDER OF BENEFITS REVIEW BOARD, UNITED STATES DEPARTMENT OF LABOR, BRB NO. 75-161

PETITIONERS' BRIEF and JOINT APPENDIX



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INDEX

Table of Authorities

Cases:

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PETITIONERS' BRIEF

Issue

When compensably injured, was claimant-respondent Caputo an "employee" as defined by § 2(3) of the Longshoremen's and Harbor Workers' Compensation Act [hereinafter "LHWCA"], 33 U.S.C. 902(3)?

Statement

Petitioners seek to reverse a Benefits Review Board [hereinafter "Board"] decision (BRB 75-161), 3 BRBS 13 (1975), 6a *infra*, affirming an Administrative Law Judge's order, 4a *infra*, awarding LHWCA compensation to claimant Caputo for injury he sustained on April 16, 1973 while employed by petitioner Northeast Marine Terminal Co., Inc. The only issue is a LHWCA jurisdictional question. The undisputed jurisdictional facts are summarized in the decisions of the Administrative Law Judge, 1a *infra*, and the Board, 6a *infra*.

Claimant was employed as a terminal laborer to help a cargo consignee's truck driver load boxes of cheese inside the consignee's truck. The cheese had been discharged from a ship at least 5 days before, and stored inside a terminal warehouse awaiting pick up by the consignee. A forklift vehicle (hilo) brought the cheese from the warehouse to the truck, which was parked more than 400 feet from the water, and put the cheese onto a rolling dolly inside the truck. While claimant was rolling the dolly, he tripped over a backstop on the truck floor and caught his foot under the dolly. It is stipulated that the job claimant was doing was the same, and entailed the same risk of injury as exists wherever and by whomsoever trucks are loaded or unloaded with dollys.

Argument

As with all jurisdictional questions, resolution of the issue requires line drawing. "In law, as in life, lines have to be drawn", *Pearce* v. *Commissioner*, 315 U.S. 543, 558

(1942), "and the constant business of the law is to draw such lines", *Dominion Hotel* v. *Arizona*, 249 U.S. 265, 269 (1919). "It is difficult to say of many lines drawn by legislation that they give those just above and those just below the line a perfectly equal protection." *Cohen* v. *Beneficial Industrial Loan Corp.*, 337 U.S. 541, 553 (1949). "But when it is seen that a line or point there must be, and that there is no mathematical or logical way of fixing it precisely, the decision of the legislature must be accepted unless we can say that it is very wide of any reasonable mark." *Louisville Gas Co.* v. *Coleman*, 277 U.S. 32, 41 (1928). Shoreside extension of LHWCA coverage by 1972 amendment was reactive to *Nacirema Co.* v. *Johnson*, 396 U.S. 212 (1969), where "an examination of the language, purpose, and legislative history of the Act", p. 214, convinced the Court that coverage stopped at "the line ** separating water from land at the edge of the pier. The invitation to move that line landward must be addressed to Congress", p. 224.

The LHWCA jurisdictional requisites are who [§ 2(3) "'employee' *means any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations* ** ", italicized definition added by 1972 amendment], by whom [§ 2(4) "'employer' means any employer any of whose employees are employed in maritime employment ** "], and where [§ 3(a) "Compensation shall be payable ** only if the disability or death results from an injury occurring upon the navigable waters ** *including any adjoining pier, wharf, dry dock, terminal* ** *or other adjoining area customarily used by an employer in loading, unloading* ** *a vessel*", italicized inclusion added by 1972 amendment]. This appeal does not raise any "by whom" or "where" questions. As evinced by the appealed decision, the Board has methodically sought

to negate the § 2(3) "who" requirement by repeatedly holding that all claimants who work for a § 2(4) employer at a § 3(a) terminal are covered, regardless of their job. But, as noted in *I.T.O. Corp.* v. *Adkins*, —— F. 2d —— (4 Cir. No. 75-1051, decided 12/22/75) slip op. p. 10, the statutory language and legislative history make indisputably clear that a status requirement has been added to the former situs-only test, and some terminal employees definitely are not covered by the amended Act.*

The amended LHWCA Senate Report, 92-1125, 92d Cong., 2d Sess. (1972), and House Report, 92-1441, 92d Cong., 2d Sess. (1972), are virtually identical. After emphasizing that the Act covers "high-risk occupations", S.R. p. 2, which, by stipulation, is inapposite to claimant Caputo's truck loading job, both Reports discuss "Extension of Coverage to Shoreside Areas", noting that pre-amendment coverage "stops at the water's edge" with consequent disparity in benefits "depending on which side of the water's edge and in which State the accident occurs", S.R. p. 12; H.R. p. 10. As observed in *I.T.O. Corp.* v. *Adkins*, *supra*, slip op. pp. 16-17, that disparity is particularly evident in a usual loading/unloading operation where some members of the same longshore gang work on the ship, directly receiving/lowering cargo from/to other gang members working on the pier apron alongside the ship. Under former law, if the same moving draft of cargo accidently struck a gang member on the ship and another gang member on

* Rehearing *en banc* has been granted in *Adkins* with reargument scheduled during the week of May 3, 1976. The *Adkins* dissent espouses a regression to situs-only (slip op. p. 29, fn. 2), as do Gilmore & Black, The Law of Admiralty (2 ed. 1975) pp. 428-430, who share an aversion to irksome line drawing, seemingly unaware of Holmes' wisdom that "the great body of the law consists in drawing such lines", *Schlesinger* v. *Wisconsin*, 270 U.S. 230, 241 (1926).

the pier apron, the former got Federal compensation and the latter got lesser State compensation. To rectify that anomaly, the amended LHWCA indubitably extends Federal coverage to the latter gang member on the pier apron. The question is, what other shoreside employees have amended LHWCA coverage?

The Senate and House Reports continue: "To take a typical example, cargo ** is typically unloaded from the ship and immediately transported to a storage or holding area on the pier, wharf, or terminal adjoining navigable waters. The employees who perform this work would be covered **", S.R. p. 13; H.R. p. 11. Thus, as stated in *I.T.O. Corp.* v. *Adkins*, *supra*, slip op. p. 23, a hilo driver who immediately transports discharged cargo from the pier apron to a terminal storage area is covered by amended LHWCA. "The Committee does not intend to cover employees who are not engaged in loading, unloading ** just because they are injured in an area adjoining navigable waters used for such activity. Thus, employees whose responsibility is only to pick up stored cargo for further trans-shipment would not be covered **," *ib.* Hence, as held in *I.T.O. Corp.* v. *Adkins*, *supra*, slip op. pp. 6, 22-23, a hilo driver who picks up stored cargo from a terminal warehouse and transports it to a consignee's truck for transshipment* does not have amended LHWCA coverage, nor, *ipso facto*, does an even more remote terminal laborer who helps put the cargo inside the truck.

Ignoring these Reports of legislative intent to draw the coverage line between those § 2(3) "employees" of a

* "Transshipment contemplates a significant, identifiable change in the nature, the mode and the conveyance used in the carriage of cargo." *Port Royal Marine Corp.* v. *United States*, 378 F. Supp. 345, 352 (S.D.Ga. 1974), aff'd w.o op. 420 U.S. 901 (1975).

§ 2(4) employer who are "engaged in maritime employment" by "immediately" transporting discharged cargo "to a storage or holding area on the pier, wharf, or terminal", and those § 2(4) "employees who are not engaged in loading, unloading" because their "responsibility is only to pick up stored cargo for further trans-shipment", the Administrative Law Judge and Board, relying on the latter's unappealed decision in *Avvento* v. *Hellenic Lines*, 1 BRBS 174 (1974), have illegally extended coverage to claimant Caputo by the sophistry that cargo is being "unloaded" until "delivered" inside the consignee's truck (*i.e.*, a laborer putting cargo into a truck is unloading a ship), whereupon no terminal employee would have further reason to handle the cargo and all terminal labor would have LHWCA coverage regardless of § 2(3) status. In addition to intolerable word twisting, the Board misconceives the extent of an ocean carrier's delivery obligation, which the carrier hires the terminal operator to perform because the ship has usually sailed before the consignee comes for the discharged cargo. The carrier does not have to help load the consignee's truck; all the carrier has to do is give the consignee reasonable opportunity to pick up the cargo and if, as here, the consignee's truckman wants terminal labor to help load the truck, the consignee must pay the terminal an additional charge for that service. *American President Lines* v. *Federal Maritime Board*, 317 F. 2d 887, 888 (D.C. Cir. 1962); *Truck Loading & Unloading Rates at New York Harbor*, 13 F.M.C. 51, 64 (1969).

Bootstrapping its determination to slight § 2(3), the Board has been amenable to the argument that "once a covered employee, always a covered employee", regardless of the assigned job at the time of injury. Thus, claimant Caputo argued that because he sometimes worked on ships

loading and discharging, he should not be denied Federal coverage because he was an assistant truck loader when hurt. But it is the employee's duties on the accident date which determine his compensable status. *Pennsylvania R. Co.* v. *O'Rourke*, 344 U.S. 334, 340 (1953); *Long Island R. Co.* v. *Lowe*, 145 F. 2d 516, 518 (2 Cir. 1944); *Daffin* v. *Pape*, 170 F. 2d 622, 624 (5 Cir. 1948); *I.T.O. Corp.* v. *Adkins*, *supra*, slip op. pp. 22-23, fn. 4.

Consistent with its intention to cover only "high-risk occupations" of those "immediately" loading/unloading ships, Congress redefined § 2(3) employees as those "engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations". Before and ever since LHWCA was amended, Regulations promulgated by the Secretary of Labor pursuant to the Act, 33 U.S.C. 941(a), define "longshoring operations" as "the loading, unloading, moving, or handling of cargo, ship's stores, gear, etc. into, in, on, or out of any vessel on the navigable waters of the United States", 29 C.F.R. 1918.3(i). Truck loader Caputo's duties do not match that definition. "Maritime employment" denotes maritime jurisdiction. It would be bizarre if a tortiously injured maritime employee could not sue in admiralty. But, if truck loader Caputo had been tortiously injured by defectively packaged cargo he was loading inside the truck, he could not sue in admiralty because of the "remote time and place test" of *Gutierrez* v. *Waterman S.S. Corp.*, 373 U.S. 206, 210 (1963), as explicated in *Garrett* v. *Gutzeit O/Y*, 491 F. 2d 228, 232 (4 Cir. 1974), and applied to indistinguishable circumstances in *Vizcaino* v. *International Export Lines*, 1974 A.M.C. 1196 (S.D.N.Y. 1974). Melding the remote time and place test with amended LHWCA language and history, *I.T.O. Corp.* v. *Adkins*, *supra*, slip op. pp. 4, 24, ju-

dicially delineated the point of rest*, shoreward of which there is no Federal coverage for terminal laborers such as claimant Caputo. With reference to the meaning of "maritime employment" in § 2(3), *Weyerhauser Company* v. *Gilmore*, —— F. 2d —— (9 Cir. No. 74-3384, decided 12/5/75, reh. den. 2/9/76) held that: "The 1972 amended prerequisite of 'maritime employment' is clearly an expressed congressional perpetuation of the essential element of admiralty jurisdiction over the employee. ** The occupational hazards intended to be guarded against are the traditional hazards to the ship's service employee arising in the course of his employment ** to be entitled to the benefits of LHCA, an employee's employment must have a realistic relationship to the traditional work and duties of a ship's service employment. Otherwise ** 'maritime employment' is nullified and rendered to read 'any employment'." slip op. pp. 6-7.

Line drawing requires detached value judgment. Regretably, the Director and Board have become too involved to be capable of that. Whatever else, Congress intended the amended LHWCA to work, and anticipated judicial construction to make it work. Continued gung-ho Board decisions and Director enforcement will make the Act so unbearably costly that it cannot work. We ask the Court to endeavor to discern and draw the line between the idealistic impossible and realistic probable. There likely is no better place and time than here and now, in this debilitated Port of New York.

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* The Federal Maritime Commission has defined "point of rest" "as that area on the terminal facility which is assigned for the receipt of inbound cargo from the ship and from which inbound cargo may be delivered to the consignee, and that area which is assigned for the receipt of outbound cargo from shippers for vessel loading." 46 C.F.R. 533.6(e).

Conclusion

The Board's decision should be reversed and the claim denied.

Respectfully submitted,

BURLINGHAM UNDERWOOD & LORD
Attorneys for Petitioners

April 7, 1976

WILLIAM M. KIMBALL
of Counsel

JOINT APPENDIX

Decision and Order of Administrative Law Judge

U.S. DEPARTMENT OF LABOR

OFFICE OF ADMINISTRATIVE LAW JUDGES

Washington, D.C. 20210

In the Matter of

RALPH CAPUTO,

Claimant,

v.

NORTHEAST MARINE TERMINAL CO.

Employer,

STATE INSURANCE FUND

Carrier,

Respondents.

Case No. 75-LHCA-20

Before: THOMAS F. HOWDER
Administrative Law Judge

DECISION AND ORDER

This proceeding involves a claim arising under the provisions of the Longshoremen's and Harbor Workers' Compensation Act, 44 Stat. 1424, as amended, 33 U.S.C. 901, *et seq.* (hereinafter "Act") and the Rules and Regulations implementing the Act, 20 C.F.R. Parts 701 and 702.

A hearing in this case was held before me in New York, New York, on October 23, 1974. The claimant and respon-

dents were represented by counsel at the hearing, and were afforded full opportunity to be heard, to adduce evidence, to call, examine and cross-examine witnesses and to file briefs. A brief in this matter was also filed on behalf of the Director, Office of Workers' Compensation Programs.

Upon the entire record in this case, and from my observation of the sole witness and his demeanor, I make the following findings, conclusions and Order:

Findings and Conclusions

Counsel for claimant and respondents stipulated that claimant, Ralph Caputo, on April 16, 1973, suffered an injury to his left foot in the course of his employment, resulting in a 15% permanent partial disability. The accident occurred in a truck being loaded on a terminal in Brooklyn leased by the employer, Northeast Marine Terminal Co., from the City of New York. The cargo involved, apparently cases of cheese, had been discharged from a vessel at least five days previously, and had been stored on the terminal's premises awaiting the arrival of the consignee. When, on April 16, the consignee's truck arrived for pick-up, it was claimant's work assignment to assist in the loading thereof. A fork lift vehicle was used to lift the cargo onto a dolly inside the truck. Claimant was injured when, while walking backwards with the rolling dolly, he tripped over a backstop on the floor of the truck, catching his left foot under the dolly.

It was further stipulated that claimant did not return to work following the accident until May 7, 1973; that claimant was temporarily totally disabled during this period; that his average weekly wage was $305.20; that timely notice of the accident was given; that the claim was timely filed; and that claimant has been paid compensation under

the workmen's compensation statute of the State of New York in the amount of $266.

The only issue in this case is whether claimant's injury falls within the coverage of the amended Act.

As of this writing the Benefits Review Board has handed down several decisions respecting the issue of coverage under the 1972 amendments to the Act: See *Gilmore* v. *Weyerhauser Co.*, BRB No. 74-141 (Nov. 12, 1974); *Avvento* v. *Hellenic Lines*, BRB No. 74-153 (Nov. 12, 1974); *Adkins* v. *I.T.O. Corp.*, BRB 74-123 (Nov. 29, 1974); *Coppolino* v. *International Terminal Operating Co.*, BRB No. 74-136 (Dec. 2, 1974); *Brown* v. *Maritime Terminals*, BRB Nos. 74-177 and 177A (December 6, 1974); *Herron* v. *Brady-Hamilton Stevedore Co.*, BRB No. 74-171 (Jan. 23, 1975); *Perdue* v. *Jacksonville Shipyards, Inc.*, BRB No. 74-200 (Jan. 31, 1975); *Harris* v. *Maritime Terminals, Inc.*, BRB No. 74-178 (Feb. 3, 1975); *Kelley* v. *Handcor, Inc.*, BRB Nos. 74-165 and 74-165A (Feb. 23, 1975); *Mason* v. *Old Dominion Stevedoring Corp.*, BRB Nos. 74-182 and 74-182A (Mar. 21, 1975); and *Ford* v. *P. C. Pfeiffer Co.*, BRB Nos. 74-191 and 74-191A (March 21, 1975). These decisions are dispositive of the instant matter, at least at the administrative law judge level, as will be indicated.

Under the statute, and under the rationale of the above decisions, claimant, in order to obtain compensation benefits under the amended Act, must have been injured in a geographical location specified by Section 3(a), and must, at the time of the injury, have been engaged in maritime employment as defined in Section 2(3), working for an employer, as defined in Section 2(4).

Claimant was injured in a truck parked within the terminal area, the nearest water being over 400 feet distant (See Respondents' Exhibit 1). In view of the above decisions, and in view of the express language of the statute,

including its express reference to "terminal", it is clear that the instant claim falls within the purview of the amended Act from the standpoint of situs.

There likewise appears to be no question that the "employer" requirements under Section 2(4) have been met. Thus the only question is whether claimant was injured in the course of maritime employment.

As pointed out in the briefs of the claimant and the Department, the controlling BRB decision in this case is *Avvento, supra*. There, as here, the claimant was injured in the process of transferring goods onto a truck—goods which had been unloaded from a vessel a few days previously and stored on the premises of the terminal while awaiting consignee pick-up.

Respondents' attempt to distinguish Avvento by pointing to a stipulation between counsel that the work claimant was doing when injured was the same work with the same risk factor as would obtain wherever and by whomsoever trucks were loaded or unloaded with a dolly. However, in view of the situs where the injury actually occurred, and of the Board's clear rulings on this point, I cannot accept the distinction.

On the basis of the foregoing findings and conclusions, I issue the following:

ORDER

1. Respondents shall pay to claimant compensation for temporary total disability, pursuant to Section 8(b) of the Act, for the period April 17, 1973 through May 6, 1973, at the rate of 66-2/3% of claimant's average weekly wage of $305.20 (not to exceed the statutory maximum), less any amounts paid to claimant for this purpose under the workmen's compensation statute of the State of New York.

2. Respondents are liable for the reasonable medical expenses of claimant incurred because of his injury, and shall pay any which may be due and payable, as provided in Section 7 of the Act.

3. Respondents shall pay to claimant compensation for permanent partial scheduled disability for 15% loss of use of his left foot, as set forth in Section 8(c) of the Act.

4. Interest on accrued payments to claimant shall be paid at the rate of 6% per annum, computed from the date each payment was originally due.

5. A fee for legal services rendered to claimant pursuant to Section 28 of the Act, is approved in favor of Angelo C. Gucciardo, Esq., in the amount of $1573.65, which shall be paid to him directly by respondents.

/s/ THOMAS F. HOWDER
THOMAS F. HOWDER
Administrative Law Judge

Dated: April 29, 1975
Washington, D.C.

Decision of Benefits Review Board

U. S. DEPARTMENT OF LABOR

BENEFITS REVIEW BOARD

Washington, D.C. 20210

BRB No. 75-161

RALPH CAPUTO

Claimant-Respondent

v.

NORTHEAST MARINE TERMINAL CO., INC.

and

STATE INSURANCE FUND

Employer/Carrier-Petitioners

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR

Party in Interest

Appeal from Decision and Order of Thomas F. Howder, Administrative Law Judge, United States Department of Labor.

Before: Washington, Chairperson, Hartman and Miller, Members.

Hartman, Member:

This is an appeal by the employer and the carrier (hereinafter, the employer) from a Decision and Order (75-LHCA-

20) of Administrative Law Judge Thomas F. Howder awarding compensation benefits to the claimant. The petitioners allege that the Decision and Order is contrary to law. The claim was filed pursuant to provisions of the Longshoremen's and Harbor Workers' Compensation Act, as amended. 33 U.S.C. §901 *et seq.* (hereinafter referred to as the Act).

The Claimant was employed by Northeast Marine Terminal Company as "terminal labor". On the date of the injury the claimant was loading a consignee's truck with cases of cheese discharged from a vessel five days earlier. These cases were being lifted into the back of the truck by a forklift and the claimant was moving them further into the truck on a dolly when he slipped and injured his foot.

The only issue before the administrative law judge was whether this claimant was a covered employee under the Act. Citing *Avvento* and other BRB decisions in that line, the administrative law judge concluded that the claimant was covered under the Act and ordered that compensation benefits be paid. *Avvento* v. *Hellenic Lines, Ltd.*, 1 BRBS 174, BRB No. 74-153 (November 12, 1974).

In *Avvento* the employee was also injured inside of a consignee's truck. He was performing the same kind of task as was the claimant in the instant case. Inasmuch as these cases are factually identical, all that the Board stated in *Avvento* pertains here and need not be repeated.

The petitioners urge that the Board reached the wrong conclusion in *Avvento*. It is their position that we should treat the date of tender of delivery rather than actual delivery as the point where goods leave the sphere of maritime jurisdiction. Their point here is that the consignee was dilatory in picking-up the cargo, that a reasonable oppor-

tunity to pick-up cargo in the Port of New York is 5 days (also known as "free time") and that as the consignee unduly delayed picking-up the cargo, admiralty jurisdiction no longer obtains. The Board takes no position on this point as it relates to the cargo; "free time" and the consignee's delay in picking-up the goods have no effect on the character of work required to deliver the cargo to the consignee. It is the work done by the longshoremen, the actual loading and unloading, with which we are concerned. The work performed by the claimant here is the same whether performed the day the cargo arrives in port or weeks later. A mere delay in time does not alter the maritime nature of work required. *Avvento* v. *Hellenic Lines, Ltd., supra.*

Finally, petitioners urge that:

> [t]he amendments were not meant to cover any worker, or injury to any worker, whose job involves no risk of injury greater than those which prevail wherever and by whomsoever goods are handled on a dolly inside a truck.

This Board has repeatedly held that the amendments have in fact extended coverage inland to include all those areas specified in Section 3(a) of the Act. 33 U.S.C. §903(a); *Avvento, supra. Adkins* v. *I.T.O. Corporation of Baltimore*, 1 BRBS 199, BRB No. 74-123 (November 29, 1974). The injury in this case occurred in a terminal, an area specifically defined to be within the jurisdiction of the Act. 33 U.S.C. §903(a). The jurisdictional requirements of Sections 2(3), (4) also having been satisfied, it is clear that the provisions of the Act obtain. 33 U.S.C. §902(3), (4).

Claimant's attorney, having submitted a request for a fee pursuant to 20 C.F.R. §702.132 for work performed in defense of this appeal, is granted a fee of $600.

The Decision and Order of the administrative law judge is in all respects affirmed.

/s/ Ralph M. Hartman
Ralph M. Hartman, Member

/s/ Ruth V. Washington
Ruth V. Washington Chairperson

/s/ Julius Miller
Julius Miller, Member

Dated this 17th day
of November, 1975.

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

- X

NORTHEAST MARINE TERMINAL COMPANY, INC. and STATE INSURANCE FUND,

Petitioners,

- against -

RALPH CAPUTO and DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR,

Respondents.

- X

No. 76-4009

CERTIFICATE OF SERVICE

I certify that on April 7, 1976 I caused 3 copies (each) of petitioners' brief and joint appendix to be served by first class mail on:

MESSRS. ISRAEL ADLER RONCA & GUCCIARDO
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SOLICITOR, U.S. DEPARTMENT OF LABOR
Attorney for Respondent Director
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Dated: New York, N.Y.

April 7, 1976

William M. Kimball
Of Counsel for Petitioners
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AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
) s.s.:
COUNTY OF NEW YORK)

, being duly sworn, deposes and says that he is a clerk in the office of Burlingham Underwood & Lord, for herein; that on the day of , 19 , he served the within by mailing a true copy thereof, securely enclosed in a postpaid wrapper, in the post-office box regularly maintained by the United States Government at 25 Broadway in said County of New York, to each of the following:

The address of each of the above is the address designated by each of them for that purpose upon preceding papers in this action, or the place where each then kept an office.

Sworn to before me this
day of , 19 .

.....

No. 76-4009

SIR :

Please take notice that the within

will be presented for settlement and signature at the office of the Clerk of this Court at

on the day of
19 , at o'clock M.
Dated 19
BURLINGHAM UNDERWOOD & LORD
for

25 Broadway
New York, N. Y. 10004

To

for

SIR :

Please take notice that the within is a copy of
this day duly filed and entered herein in the office of the Clerk of this Court.
Dated 19
BURLINGHAM UNDERWOOD & LORD
for

25 Broadway
New York, N. Y. 10004

To

for

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

NORTHEAST MARINE TERMINAL COMPANY, INC. and STATE INSURANCE FUND,

Petitioners,

- against -

RALPH CAPUTO and DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR,

Respondents.

CERTIFICATE OF SERVICE

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